

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**

Herman Yoh,	:	
Petitioner	:	
	:	
v.	:	File No. 1:09-cv-18
	:	
Andrew Pallito, Commissioner,	:	
Vermont Department of Corrections,	:	
Respondent	:	

ORDER

The Magistrate Judge's Report and Recommendation was filed November 4, 2009. (Paper 28.) After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Yoh's Petition filed pursuant to 28 U.S.C. § 2254 and Motion for an Evidentiary Hearing (Papers 2 and 12) are DENIED. Respondent's Motion to Dismiss (Paper 8) is GRANTED. Respondent's Motion to Strike (Paper 9) is DENIED as moot.

Pursuant to Fed. R. App. P. 22(b), the Court DENIES petitioner a certificate of appealability ("COA") because the petitioner failed to make a substantial showing of a denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). The Court rejects the petition on its merits because the petitioner has failed to demonstrate that reasonable jurists would find the Court's "assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000).

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 30th day of December, 2009.

/s/ J. Garvan Murtha

Honorable J. Garvan Murtha
Senior United States District Judge